METALOCK MARINE CONSTRUCTION PTE. LTD. v. KELVINSIDE LTD.

[O.C.J. (Sinnathuray J.) September 13, 1984]

[Singapore – Originating Summons No. 239 of 1984]

Practice and Procedure – Shipbuilders as claimants – Balance of monies due from respondents – Interim injunction against respondents from removing vessel out of Singapore – Whether should be discharged – Test – Good arguable case – Real risk that judgment would remain unsatisfied.

In this case the claimants were shipbuilders and they had entered into a contract with the respondents to build 2 vessels, one of which was the subject of the interim injunction. The vessels were duly completed and delivered to the respondents, who had not paid the balance monies due to the claimants. The claimants applied by originating summons and obtained on March 22, 1984 an interim injunction restraining until further order the respondents from removing from the jurisdiction of the Court and from selling, pledging, transferring, mortgaging and/or otherwise dealing with one unit 77ft. Rhodes Ketch. The respondents then made an application to discharge the interim injunction and to set aside the originating summons. The principal question was whether there was a real risk that judgment or award in favour of the claimants would remain unsatisfied if the interim injunction was lifted in favour of the respondents, a foreign company incorporated in Hong Kong with a paid-up capital of HK$30, without a registered office in Singapore.

Held, dismissing the application of the respondents: (1) the claimants as shipbuilders are in a very different and a stronger position from the situation of a sale and purchase of a ship as in the English case of *Ninemia Maritime Corpn.* v. *Trave Schiffahrtsgesellschaft m.b.H.*[1] which gives the test for an interim injunction;

(2) the respondents ought not to be allowed to take the vessel out of Singapore until the balance of monies is paid or properly secured.

Case referred to:

(1) *Ninemia Maritime Corpn.* v. *Trave Schiffahrtsgesellschaft m.b.H. & Co. K.G.* [1983] 1 W.L.R. 1412.

SUMMONS-IN-CHAMBERS.

Sarjit Singh Gill for the claimants.
Goh Kok Leong for the respondents.

Cur. Adv. Vult.

Sinnathuray J. : The claimants by way of an originating summons filed on March 22, 1984 made an application to the Court for an order that the respondents by their agents or servants or otherwise be restrained until further order from removing from the jurisdiction of this Court and from selling, pledging, transferring, mortgaging and/or otherwise howsoever disposing or dealing with their assets within the jurisdiction of this Court restricted to one unit 77 foot Rhodes Ketch now lying at 51, Shipyard Road, Singapore. This application was heard by Lai Kew Chai J. who, on March 22, 1984, made an order in terms of the originating summons.

On April 12, 1984, the respondents took out a Summons in Chambers No. 2623/84 and in this Summons they asked for a number of orders but for the present purpose it is sufficient to mention the first two – (1) that the originating summons and all subsequent proceedings herein may be set aside; (2) that the interim injunction granted on March 22, 1984 may be discharged. It is these applications that I have heard this morning.

There is one other intermediate step which I should mention. The said Summons-in-Chambers came on for hearing on August 27, 1984 before the learned Chief Justice. A draft order set out in a telex was placed before him and was approved by him that day. The draft order reads as follows:

> "That without prejudice to the application of the respondents made herein by Summons-in-Chambers entered No. 2623/84 dated April 12, 1984, upon the said respondents furnishing to the claimants a banker's guarantee in the sum of $83,135.35, the Order of Court made herein on March 22, 1984 may be varied so as to permit the removal from and disposal out of the jurisdiction of this Court by the said respondents, of the said 77 foot Rhode Ketch in whatever manner that the respondents may think fit.

At the hearing this morning, Mr. Goh for the respondents raised two procedural objections and one substantive objection. I propose to deal only briefly with these procedural points because I am satisfied that they are without merit. Mr. Goh referred to Order 29 Rule 1(3) of the Rules of the Court. This Rule predicates that, except where the case is one of urgency, an application for an injunction may not be made before the issue of the writ or originating summons is filed. That is not the case here. In this case the originating summons itself is the application for the interim injunction.

The second ground is that, as there was no return date on this interim injunction, *ipso facto* that interim injunction was a permanent injunction. I cannot accept this proposition. Admittedly, without a return date, the interim injunction that was granted does not comply with the usual form of an *ex parte* interim injunction and would appear to be defective. However, I accept the submission made by Mr. Gill that the Order of Court states on the face of it that it is an interim injunction and, more

particularly, the Order of Court states that it is to remain in force until further order. The reason the claimants did not ask for a return date in this case, it is said, was that the claimants thought it best to leave it to the respondents to come to Court and challenge the interim injunction. In the particular circumstances of this case, I accept the explanation and rule that the non-compliance is an irregularity and does not nullify the Order of Court, but let me say that it is best to stick to the normal form and practice followed under the Rules.

So this brings me to deal with the substantive objection that is raised before me. As regards it I have been referred to *Ninemia Maritime Corpn.* v. *Trave Schiffahrtsgesellschaft m.b.H.*[1] It is clear to me, on the portion of the judgment which Mr. Goh has referred to me that he has modelled this application to discharge the interim injunction and to set aside the originating summons on the judgment of the Court of Appeal. In this context, I accept the test for an interim injunction as given by Lord Justice Kerr at page 1422 –

"In our view the test is whether, on the assumption that the plaintiffs have shown at least "a good arguable case," the Court concludes, on the whole of the evidence then before it, that the refusal of a Mareva injunction would involve a real risk that a judgment or award in favour of the plaintiffs would remain unsatisfied."

I also accept the statement of the Court at page 1419 that –

" . . . we do not think that it would be useful to seek to lay down any standard of evidence which applicants for Mareva injunctions must satisfy in order to succeed upon an ex parte application. Bare assertions that the defendants are likely to put any asset beyond the plaintiff's grasp and are unlikely to honour any judgment or award are clearly not enough by themselves. Something more is required."

Having set out those propositions, it is right to say that each case must be considered on the facts. The facts in the present case are these: (1) the claimants are shipbuilders and they had entered into a contract with the respondents to build two vessels – now only one vessel is the subject matter of the interim injunction; (2) it is admitted by the respondents for the purpose of this hearing that the vessels were duly completed and possession thereof was delivered to them, the dates are set out in paragraph 5 of the affidavit of the deponent for the claimants; (3) that there is a balance of monies due to the builders as claimants in respect of the construction of the vessels; (4) the respondents are a foreign company incorporated in Hongkong and, to be emphasised, with a paid up capital of HK$30; (5) the respondents do not have a registered office in Singapore; (6) the only fund the respondents have in Singapore is an ACU deposit account of S$1 million with a bank renewable up to November 1984. The respondents however have borrowed monies from the bank and paid for the construction of the two vessels on the strength of the ACU deposit. It is not known what more is owed by the respondents to the bank.

On these facts, it is conceded by Mr. Goh, on the test I have earlier mentioned, that the claimants have "a good arguable case". The only question is whether there is a real risk that judgment or award in favour of the claimants would remain unsatisfied if this interim injunction is lifted. Here I will accept what Mr. Collingwood has said in his affidavit for the respondents that the respondents will honour any award made against them subject to the right of appeal; that the respondents have not defaulted on a loan in the past and that it has never been their intention of dealing with the two boats or any other assets of the respondents so as to avoid any award that may be made against them. Having said that however, I am of the view that the facts of the case before me are to be distinguished from the facts of the above case before the Court of Appeal in England. In the present case, the claimants as shipbuilders are in a very different and stronger position from the situation of a sale and purchase of a ship as in the above English case. As shipbuilders, in the normal course, the claimants would have a lien on the vessel they had constructed. But in this case, the vessels were duly completed and possession was delivered to the respondents. In my view, the respondents ought not to be allowed to take the vessels out of Singapore until the balance of monies is paid or properly secured. For these reasons, I dismiss this application for discharge of the interim injunction and the application to set aside the originating summons with costs.

Application dismissed.

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